

## AMENDMENT – 10/16/08

**AGENDA**  
**STATE TRANSPORTATION BOARD MEETING**  
**9:00 a.m., Friday, October 17, 2008**  
**Town of Wickenburg Council Chambers**  
**155 N. Tegner**  
**Wickenburg, AZ 85390**

Pursuant to A.R.S. Sec. 38-431.02, notice is hereby given to the members of the State Transportation Board and to the general public that the State Transportation Board will hold a meeting open to the public on Friday, October 17, 2008, 9:00 a.m., at the Town of Wickenburg Council Chambers, 155 N. Tegner, Wickenburg, Arizona 85390. The Board may vote to go into Executive Session, which will not be open to the public, to discuss certain matters relating to any items on the agenda. Members of the Transportation Board will attend either in person or by telephone conference call.

**EXECUTIVE SESSION OF THE STATE TRANSPORTATION BOARD**

Pursuant to A.R.S. 38-431.03 (A) (3), notice is hereby given to the members of the Arizona State Transportation Board and to the general public that the Board may meet in Executive Session for discussion or consultation for legal advice with legal counsel at its meeting on Friday, October 17, 2008. The Board may, at its discretion, recess and reconvene the Executive Session as needed, relating to any items on the agenda.

**Amendments to the State Transportation Board Agenda are as follows:**

**CHANGE TO AGENDA**

Non-Interstate Federal-Aid (“A” “B”) projects do not need FHWA concurrence, but must comply with DBE regulations; other projects are subject to FHWA and/or local government concurrence and compliance with DBE regulations)

<b>*ITEM 23:</b>	BIDS OPENED:	September 26
	HIGHWAY:	CASA GRANDE – TUCSON HIGHWAY (I-10)
	SECTION:	I-10 / I-19 T.I.
	COUNTY:	Pima
	ROUTE NO.:	I-10
	PROJECT:	IM-010-D(200)A 010 PM 260 H734501C
	FUNDING:	94% Federal      6% State
	LOW BIDDER:	Recon, Inc.
	AMOUNT:	\$      1,942,490.00
	STATE AMOUNT:	\$      2,767,196.00
	\$ UNDER:	\$      824,706.60
	% UNDER:	29.8%
	NO. BIDDERS:	5
	<b>RECOMMENDATION:</b>	<b>AWARD</b>

Non-Interstate Federal-Aid (“N” “X”) required FHWA concurrence and compliance with DBE regulations)

<b>*ITEM 24:</b>	BIDS OPENED:	September 26
	HIGHWAY:	HOOVER DAM – KINGMAN HIGHWAY (US 93)
	SECTION:	Hoover Dam to Milepost 17
	COUNTY:	Mohave
	ROUTE NO.:	US 93
	PROJECT:	NH-093-A(200)N 093 MO 002 H534701C
	FUNDING:	94% Federal                  6% State
	LOW BIDDER:	FNF Construction, Inc.
	AMOUNT:	\$        71,269,683.07
	STATE AMOUNT:	\$        86,311,400.00
	\$ UNDER:	\$        15,041,716.93
	% UNDER:	17.4%
	NO. BIDDERS:	9
	<b>RECOMMENDATION:</b>	<b>AWARD</b>

#### COMMENTS:

Scarsella Bros., Inc. was read as the apparent low bidder at the bid opening with an amount of \$69,854,463.54. Subsequent to the bid opening, staff analysis of the bid revealed that interpreting the bid in accordance with Standard Specification 102.10 (A) & (C) resulted in Scarsella’s bid actually being \$73,501,917.04.

The Standard Specifications Subsection 102.10(A) states in case of a discrepancy between unit bid prices and the multiplications shown for each bid item, the unit price governs. Subsection 102.10(C) states that that the Department will not correct the unit bid price even if the bidder shows there was a clerical error. The Standard Specifications were incorporated into the Advertisement for Bids and therefore are binding on the Department, the bidders, and the Transportation Board. The Board does not have the authority to reform the bid and declare Scarsella the low bidder.

Aside from the Standard Specifications, if federal rules were applied to this situation, the Department and the Board could not allow the Scarsella bid to be reformed to make it the low bidder. Even the most lenient standard would require that the intent of the bidder would have to be discernable from the face of the bid. In order for the Scarsella bid to be reformed to be the low bid, the Department would have to make inferences that are not apparent from the bid.

The bidder that was originally read as the second low bidder, FNF Construction, Inc., is the lowest responsive and responsible bidder.

The bidder that is now the second low bidder, Fisher Sand & Gravel Co. DBA Southwest Asphalt Paving, has argued that the FNF bid should be rejected as being unbalanced to the detriment of the Department. Fisher argues that FNF frontloaded its bid by bidding high on items that will be performed early in the project and low on items that will be done later. Staff

has analyzed FNF's bid in light of Fisher's protest and does not agree with Fisher's position. Fisher has not established that FNF's bid is unbalanced to the extent claimed. An analysis of the bids reveals that although there were differences in some individual bid items, taking the bids as a whole does not show that there was unbalancing to the detriment of the Department. While some items were bid higher by FNF than Fisher, bids for related items done at the same time counterbalanced alleged discrepancies. For example, while the FNF bid for erosion control berms was higher than Fisher's, FNF's bid on other early earthwork items was lower than Fisher's. FNF also explained that certain items would cost more than they would on a normal project due to the site conditions of this project. Also some areas of claimed unbalancing showed relatively small differences between the bidders that can be explained by differing approaches to the work. For example, the difference in the bids in paving and related items amounts to about 15 percent of Fisher's bid on these items. The 15 percent can be explained by the different means and methods of each contractor and does not establish intent to unbalance these items.

The State Engineer does not believe that FNF's bid is unbalanced to the detriment of the Department. The State Engineer therefore recommends award of the contract to FNF Construction, Inc.